

Before the  
COPYRIGHT ROYALTY JUDGES  
Washington, DC

*In re*

**DETERMINATION OF ROYALTY RATES AND  
TERMS FOR PERFORMANCE OR DISPLAY  
OF NONDRAMATIC MUSICAL WORKS AND  
PICTORIAL, GRAPHIC, AND SCULPTURAL  
WORKS BY PUBLIC BROADCASTING  
ENTITIES (PB IV)**

**Docket No. 21-CRB-0002-PBR  
(2023-2027)**

**PROPOSAL OF BROADCAST MUSIC, INC.  
OF RATES AND TERMS FOR COLLEGES AND UNIVERSITIES**

Broadcast Music, Inc. (“BMI”) hereby submits this proposal (the “Proposal”) for statutory license fees to be paid to BMI by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (“NPR”) for the performance of copyrighted musical works in BMI’s repertory. BMI also proposes a revised version of 37 C.F.R. §381.5, which “applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with NPR.” This Proposal covers the years 2023 through 2027, which is the time period for which rates and terms are being set through the above-captioned proceeding (the “Proceeding”).

BMI licenses, on a non-exclusive basis, the public performing right in over 17 million non-dramatic musical works on behalf of its more than 1.1 million affiliated songwriters, composers and publishers, including thousands of foreign works through BMI’s reciprocal licensing agreements with over 90 foreign performing right organizations.

## BACKGROUND

Shortly after the Copyright Revision Act of 1976 became effective (on January 1, 1978), the Copyright Royalty Tribunal (“CRT”) held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities for the performance of copyrighted musical works, pursuant to 17 U.S.C. §118. Among those public broadcasting entities were noncommercial educational radio stations licensed to colleges or universities that were not members of NPR. *See generally*, 43 Fed. Reg. 25,069 (June 8, 1978). Those entities rely on the Section 118 license in connection with the musical compositions included in their radio broadcasts. In 1978, the CRT fixed the annual fee to be paid to BMI by college radio stations which are not affiliated with NPR (“College Radio Stations”) for their performances of copyrighted musical works in BMI’s repertory. *See* 43 Fed. Reg. 25,071, 25,073; 37 C.F.R. §§304.5, 304.10 (1978). That CRT determination was effective through December 31, 1982.

In accordance with the 5-year adjustment provision in the statute, in 1982, 1987, 1992, 1997 and 2002, BMI and the American Council on Education (“ACE”), the nation’s most visible and influential higher education organization, which represents more than 1,700 colleges and universities, made joint proposals to the CRT and its successor, the Librarian of Congress (the “Librarian”), to adjust the BMI blanket license fees for College Stations. These proposals were adopted by the CRT and the Librarian.

For the 5-year adjustment period for Section 118 rates and terms that began in 2006, BMI and ACE submitted a joint proposal to the Judges, as successors to the CRT and the Librarian, to continue the royalty fee previously set with annual cost-of-living adjustments in accordance with the Consumer Price Index for all Urban Consumers, without seasonal adjustment, as published by the U.S. Department of Labor’s Bureau of Labor Statistics (“CPI”) for the years 2008 through

2012. The joint BMI-ACE proposal from 2006 included input and approval from the National Association of College and University Business Officers (“NACUBO”), a membership organization that represents more than 1,700 colleges and universities in the United States. This proposal was adopted by the Judges on November 30, 2007. *See* 72 Fed. Reg. 67646.

In 2011, BMI and ACE, submitted a joint proposal to the Judges, with input and approval from NACUBO, that created a tiered system, with tiered fees based on the number of full-time students enrolled. The exception is that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power (“ERP”) of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population. This proposal was adopted by the Judges on November 29, 2012. *See* 77 Fed. Reg. 71105.

In 2016, BMI and NACUBO submitted a joint proposal, supported by ACE, with rates and terms for College Radio Stations reflecting the same tiered system as in the 2011 BMI-ACE joint proposal, with annual cost-of-living adjustments generally in accordance with CPI. This joint proposal was adopted by the Judges on January 19, 2018. *See* 83 Fed. Reg. 2739.

On January 5, 2021, the Judges published a notice in the above-captioned Proceeding to set rates for the five-year term from January 1, 2023 through December 31, 2027. *See* 86 Fed. Reg. 325. BMI timely filed a petition to participate in the Proceeding. However, no entity or representative of the College Radio Stations submitted a petition to participate in the Proceeding.

### THE BMI PROPOSAL

BMI hereby proposes that the BMI blanket license fees for the College Radio Stations for the five year period 2023 through 2027 will continue the tiered approach in 37 C.F.R §381.5(c)(2)(i) that was first adopted by the Judges in 2012. A chart of the proposed rates

embodying the BMI Proposal is attached hereto as Appendix A. No revisions to the text of the governing regulations, *i.e.*, 37 C.F.R. §381.5, are proposed. The only modification from the rates in effect through 2022 is an annual cost-of-living increase based on CPI, reflecting how increases were calculated in the joint proposals submitted by BMI and ACE in 2006 and 2011, and by BMI and NACUBO in 2016. As noted above, no entity or representative for the College Radio Stations submitted a petition to participate in this Proceeding; however, BMI has shared the proposed rates attached hereto as Appendix A with NACUBO (which has, in turn, shared the proposed rates with ACE), and both NACUBO and ACE support the Proposal and have stated that they “share a position that royalty rate escalations limited to an annual consumer price index-based adjustment is a reasonable approach to updating 37 C.F.R. §381.5.”<sup>1</sup>

BMI proposes the fees set forth in Appendix A as the BMI license fees for all College Radio Stations, which the Judges may adopt and incorporate within 37 C.F.R. §381.5. Such adoption in the regulations would make further activity in the Proceeding, including discovery, Written Direct Statements, or a hearing, unnecessary for College Radio Stations insofar as their performance of BMI music is concerned.

The Judges have statutory authority “to make determinations and adjustments of reasonable terms and rates of royalty payments” for the Section 118 license pursuant to 17 U.S.C. §801(b)(1). BMI has no objection to the proposed modifications to 37 C.F.R. §381.5 being printed and made available to the public in the form of a Federal Register notice.

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<sup>1</sup> Email correspondence from Liz Clark, Vice President, Policy and Research, NACUBO, to Janet Fries, counsel for BMI, dated May 7, 2021. This correspondence copied Bryan Dickson, Director, Student Financial Services and Educational Programs, NACUBO; Peter McDonough, Vice President and General Counsel, ACE; and Jennifer Criss, counsel for BMI.

## CONCLUSION

BMI requests that the Judges adopt this Proposal for a modification of rates to be paid by College Radio Stations pursuant to Section 118 of the Copyright Act and that 37 C.F.R. §381.5 be amended with the new rates set forth in Appendix A of this Proposal.

Respectfully submitted,

BROADCAST MUSIC, INC.

/s/ Hope M. Lloyd / jtc

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*Counsel for BMI*

Dated: May 17, 2021

**APPENDIX A**

	<b>Number of full-time students</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
<b>Level 1</b>	<1,000	\$390	\$400	\$410	\$421	\$432
<b>Level 2</b>	1,000-4,999	451	463	475	487	500
<b>Level 3</b>	5,000-9,999	619	635	652	669	686
<b>Level 4</b>	10,000-19,999	801	822	843	865	887
<b>Level 5</b>	20,000+	1,009	1,035	1,062	1,090	1,118

## CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of May, 2021, a copy of the foregoing Proposal of Broadcast Music, Inc. on Rates and Terms for Colleges and Universities was filed electronically using eCRB, which will automatically provide electronic service copies to all counsel and *pro se* participants who are registered to use eCRB. *See* 37 C.F.R. § 303.6(h)(1). A courtesy copy is being provided by email to representatives of NACUBO and ACE, which are not participants in the proceeding.

/s/ Jennifer T. Criss

Jennifer T. Criss

# Proof of Delivery

I hereby certify that on Monday, May 17, 2021, I provided a true and correct copy of the Proposal of Broadcast Music, Inc. of Rates and Terms for Colleges and Universities to the following:

Public Broadcasting Entities, represented by David P Mattern, served via ESERVICE at dmattern@kslaw.com

Powell, David, represented by David Powell, served via ESERVICE at davidpowell008@yahoo.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via ESERVICE at smosenkis@ascap.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via ESERVICE at ablin@fhhlaw.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via ESERVICE at scott@oandzlaw.com

Educational Media Foundation, represented by David Oxenford, served via ESERVICE at doxenford@wbklaw.com

The Harry Fox Agency LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

SESAC Performing Rights, LLC, represented by John C. Beiter, served via ESERVICE at john@beiterlaw.com

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via ESERVICE at cheshirerigler@shrumhicks.com

Signed: /s/ Jennifer T. Criss